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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of Ashar AZIZ

Serial No.: 09/818,424

Filed: March 26, 2001

For: SYMBOLIC DEFINITION OF A  
A COMPUTER SYSTEM

: Group Art Unit: 2152

: Examiner: Not Yet Assigned

**RECEIVED**

OCT 12 2001

**OFFICE OF PETITIONS**

**PETITION TO ACCEPT LATE SUBMISSION**

**OF REQUEST TO RESCIND A PREVIOUS NONPUBLICATION REQUEST**

**UNDER 35 U.S.C. § 122(b)(2)(B)(iii) and 37 C.F.R. § 1.182**

Attention: Office of Petitions  
Assistant Commissioner of Patents  
BOX DAC  
Washington, D.C. 20231

Sir:

Applicant respectfully petitions the Director of the U.S. Patent & Trademark Office (USPTO) to accept late submission of a Request to Rescind Previous Nonpublication Request under 35 U.S.C. § 122(b)(2)(B)(ii), (iii). This petition is grantable for the following reasons.

**1. Facts.** This application was filed on March 26, 2001, with a non-publication request under 35 U.S.C. § 122(b)(2)(B)(i). On June 13, 2001, the applicant's assignee foreign-filed this application by filing a corresponding PCT application and Taiwan application.

The applicant is represented in this application by the undersigned attorney and law firm. The law firm uses computer-based docketing system, Case Tracking System by Flextrac, to track all due dates and response dates in matters pending before the USPTO. The law firm updated the programming of this system in response to rule changes by the USPTO

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130.00 OP

providing for 18 month publication of applications. On or about mid-June, 2001, members of the staff in the law firm office recorded a docket entry for the due date to file a Request to Rescind Previous Nonpublication Request in the docketing system. The law firm staff regularly printed due date reports from the docketing system, and the undersigned attorney for the applicant regularly reviewed the docket reports.

However, due to a rule programming error, the docketing system failed to print the due date for the Request to Rescind in any docketing report, for this application and all other applications handled by the law firm and subject to similar deadlines. As a result, the applicant unintentionally failed to file a Request to Rescind Previous Nonpublication Request within 45 days of the date of filing of the foreign applications, or by July 28, 2001 for this application.

In mid-September, 2001, an attorney in the law firm discovered and corrected the rule programming error described above. This Petition has been promptly filed thereafter. Thus, the entire delay in filing the required notice or request to rescind, from the due date for the same until the filing of this grantable petition, has been unintentional.

**2. Applicable Law.** An applicant may rescind a nonpublication request at any time, 35 U.S.C. § 122(b)(2)(B)(ii), and is required to notify the Director of any foreign filing not later than 45 days after the date of the filing of a foreign or international application. See 35 U.S.C. § 122(b)(2)(B)(iii). Filing a request to rescind a previous nonpublication request constitutes the notice required by statute under current USPTO practice. See Form PTO/SB-36 (11-00), "Note." While a failure to provide notice of foreign filing or rescind a nonpublication request within 45 days of a foreign filing of the same invention may cause constructive abandonment of an application, the USPTO is required by statute to accept such

notice late, and cannot hold an application abandoned, if the applicant shows to the satisfaction of the Director that the delay in submitting the notice was unintentional. See 35 U.S.C. § 122(b)(2)(B)(iii).

**3. Requested Relief.** A Request to Rescind Previous Nonpublication Request accompanies this petition. Applicant has shown, by the facts given above, that the delay in submitting such notice has been unintentional. Therefore, the applicant respectfully requests the USPTO to accept the enclosed Request at this time as is proper under the statute.

**4. Petition Fee.** This petition is made under 35 U.S.C. § 122(b)(2)(B)(iii), and not for unintentional abandonment under 37 C.F.R. §§ 1.213(c) or 1.137(b). Therefore, a petition fee of \$130.00 as specified in 37 CFR § 1.17(l) for petitions under 37 C.F.R. § 1.182, in the form of a law firm check, is submitted herewith.

The USPTO is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the consideration of this petition.

Respectfully Submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

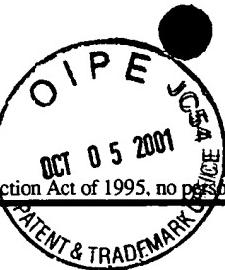
October 5, 2001

  
\_\_\_\_\_  
Christopher J. Palermo  
Reg. No. 42,056

(408) 414-1080 ext. 202 CJP:ta  
1600 Willow Street  
San Jose, CA 95125-5106  
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(Certificate of Mailing by Express Mail follows)

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**REQUEST TO RESCIND  
PREVIOUS NONPUBLICATION  
REQUEST**  
**35 U.S.C. 122(b)(2)(B)(ii)**

<i>Application Number</i>	09/818,424
<i>Filing Date</i>	March 26, 2001
<i>First Named Inventor</i>	Ashar AZIZ
<i>Title</i>	SYMBOLIC DEFINITION OF A COMPUTER SYSTEM
<i>Attorney Docket Number</i>	55218-0504
<i>Group Art Unit</i>	2152
<i>Examiner</i>	

I hereby **rescind** the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

Dated: October 5, 2001

  
Christopher J. Palermo  
Reg. No. 42,056

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OCT 12 2001

OFFICE OF PETITIONS

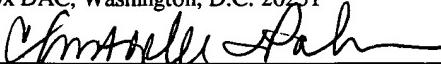
Note: Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or International filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five (45) days after the date of filing such foreign or international application. See 37 CFR 1.137(f) if a notice of subsequent foreign or International filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is not filed within forty-five (45) days after the date of filing of the foreign or international application.

**EXPRESS MAIL CERTIFICATE OF MAILING OR TRANSMISSION**

"Express Mail" mailing label number EL566597375US

Date of Deposit: October 5, 2001

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Office of Petitions, Commissioner for Patents, Box DAC, Washington, D.C. 20231

  
Christopher J. Palermo

10-5-01

Date

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

10-09-01

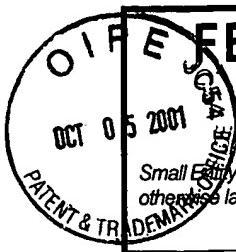
DTC/AB

PTO/SB/17 (12/99)

Approved for use through 09/30/2000. OMB 0651-0032

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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# OFFICE FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.  
Small Entity payments must be supported by a small entity statement,  
otherwise large entity fees must be paid. See Forms PTO/SB/09-12.  
See 37 C.F.R. §§ 1.27 AND 1.28

TOTAL AMOUNT OF PAYMENT (\$ 130.00)

Complete if Known

RECEIVED

Application Number	NYA	OCT 12 2001
Filing Date	March 26, 2001	
First Named Inventor	Ashar AZIZ	
Examiner Name	NYA	OFFICE OF PETITIONS
Group/Art Unit	NYA	
Attorney Docket No.	55218-0504	

## METHOD OF PAYMENT (check one)

1.  Throughout the pendency of this application, please charge any additional fees, including any required extension of time fees, and credit all overpayments to deposit account 50-1302. A duplicate of this sheet is enclosed.

Deposit Account Number

50-1302

Deposit Account Name

Hickman Palermo Truong &amp; Becker, LLP

2.  Payment Enclosed:

Check  Money Order  Other

3.  Applicant(s) is entitled to small entity status.

See 37 CFR 1.27

## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity Fee Code	Small Entity Fee Code	Fee Description	Fee Paid
105	130	205 65 Surcharge – late filing fee or oath	
127	50	227 25 Surcharge – late provisional filing fee or cover sheet.	
139	130	139 130 Non-English specification	
112	920*	112 920* Requesting publication of SIR prior to Examiner action	
113	1,840*	113 1,840* Requesting publication of SIR after Examiner action	
115	110	215 55 Extension for reply within first month	
116	390	216 195 Extension for reply within second month	
117	890	217 445 Extension for reply within third month	
118	1,390	218 695 Extension for reply within fourth month	
128	1,890	228 945 Extension for reply within fifth month	
119	310	219 155 Notice of Appeal	
120	310	220 155 Filing a brief in support of an appeal	
121	270	221 135 Request for oral hearing	
138	1,510	138 1,510 Petition to institute a public use proceeding	
140	110	240 55 Petition to revive – unavoidable	
141	1,210	241 605 Petition to revive – unintentional	
142	1,210	242 605 Utility issue fee (or reissue)	
143	430	243 215 Design issue fee	
144	580	244 290 Plant issue fee	
122	130	122 130 Petitions to the Commissioner	130.00
123	50	123 50 Petitions related to provisional applications	
126	240	126 240 Submission of information Disclosure Stmt	
581	40	581 40 Recording each patent assignment per property (times number of properties)	
146	690	246 345 Filing a submission after final rejection (37 CFR § 1.129(a))	
149	690	249 345 For each additional invention to be examined (37 CFR § 1.129(b))	
Other fee (specify) _____			
Other fee (specify) _____			
SUBTOTAL (1)	(\$ 0.00)	SUBTOTAL (3)	(\$ 130.00)

## 2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from Below	Fee Paid
40	-20**= 20	X 9.00 = 180.00	
4	-3**= 1	X 40.00 = 40.00	

Multiple Dependent

Large Entity Fee Code	Small Entity Fee Code	Fee Description
103	18	203 9 Claims in excess of 20
102	80	202 40 Independent claims in excess of 3
104	270	204 135 Multiple dependent claim, if not paid
109	80	209 40 **Reissue independent claims over original patent
110	18	210 9 **Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ 0.00)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$ 130.00)

## SUBMITTED BY

Complete if applicable

Name (Print/Type)	Christopher J. Palermo	Registration No. (Attorney/Agent)	42,056	Telephone	(408) 414-1080
Signature	<i>Christopher J. Palermo</i>			Date	October 5, 2001

## WARNING:

Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**EXPRESS MAIL CERTIFICATE OF MAILING**

"Express Mail" mailing label number EL566597375US Date of Deposit October 5, 2001

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Office of Petitions, Commissioner for Patents, Box DAC, Washington, D.C. 20231.

Christopher J. Palermo  
(Typed or printed name of person mailing paper or fee)

  
(Signature of person mailing paper or fee)